

REMARKS

Upon entry of the above amendment, claims 1 and 8 will have been amended, no claims will have been canceled, and no claims will have been added.

Initially, Applicant would like to thank the Examiner for accepting the drawings, which were filed on August 29, 2001.

Applicant also acknowledges with appreciation that the Examiner has indicated that claim 8 would be allowable if amended to overcome the objection and that claims 2-4, 6, and 7 would be allowable if amended to overcome the rejection under 35 U.S.C. §112, first paragraph and to include all of the limitations of the base claim and any intervening claims. However, with regards to the Examiner's statement of reasons for the indication of allowable subject matter, Applicant would like to further clarify that the claims in the present application recite a combination of features, and that the patentability of these claims is also based on the totatlity of the features recited therein, which define over the prior art.

In the outstanding final Official Action, the Examiner maintained the objection to claims 1 and 8 for minor informalities and asserted that "either one of in series and in parallel" should be amended to "either one of in series or in parallel". With regards to the objection, Applicant maintains that "either one of in series and in parallel" is proper as previously argued in the response under 37 C.F.R. 1.111. Nevertheless, Applicant has amended the recitation in an attempt to expedite prosecution and to overcome the

objection as suggested by the Examiner. Thus, Applicant respectfully requests reconsideration and a withdrawal of the objection to claims 1 and 8.

Further, Applicant respectfully submits that since the amendments to claims 1 and 8 were not specifically made to overcome a rejection based upon prior art, no estoppel should be deemed to attach thereto.

In addition, the Examiner rejected claims 1-7 under 35 U.S.C. §112, first paragraph and asserted that the specification does not reasonably provide enablement for a battery pack having a case having at least one strut extending from the case into a spacing between the secondary batteries defined by an electrical insulating plate (where electrode terminals are provided). In particular, the Examiner argues that the struts 22 are not provided in the space defined by an electrical insulating plate 5 connecting surface of the secondary batteries where electrode terminals are provided.

Applicant respectfully traverses the rejection of claims 1-7 under 35 U.S.C. §112, first paragraph and respectfully submits that the Examiner is incorrect with respect to this rejection. Contrary to the Examiner's assertions, Figure 2, for example, clearly illustrates that the length of the plate (e.g., element 5), defines the width (labeled as W) of the space between the batteries within which the at least one strut is positioned. In other words, the width (W) of the space is defined in relation to the length of the connection plate, which further defines the space for at least one strut in the space between the secondary batteries. Thus, since the specification clearly supports, enables, and is commensurate in

scope with the claims, Applicant respectfully requests reconsideration of the claims and a withdrawal of the rejection of claims 1-7 under 35 U.S.C. §112, first paragraph.

Furthermore, the Examiner rejected claims 1 and 5 under 35 U.S.C. §102(b) as being anticipated by THIELE et al (US 4,593,461). However, Applicant respectfully submits that the rejection is improper because THIELE does not disclose each and every limitation as recited in claim 1.

For example, THIELE does not teach or suggest, *inter alia*, a case having at least one strut extending therefrom in the predetermined spacing between the secondary batteries and spaced from the secondary batteries. To the contrary, as illustrated in Figures 3 and 4, THIELE teaches partitioning walls (36) that are in contact with the power cells. Also, in column 3, beginning on line 46, THIELE teaches that the partitioning walls (36) contain and align the power cells, which requires at least some contact between the partitioning walls (36) and the power cells. In THIELE, the partitioning walls are not spaced from the power cells. For this reason alone, the rejection should be withdrawn and the claims pending in the present application should be reconsidered and allowed.

Moreover, with regards to claim 1, THIELE also does not teach or suggest, *inter alia*, an electrical insulating plate that defines a predetermined spacing in which the at least one strut extends. Applicant respectfully submits that in THIELE, the partitioning walls are not positioned within a space, which is defined by the nonconductive washer

member 38. Thus, as THIELE fails to disclose each and every feature as recited in claim 1, Applicant respectfully requests a withdrawal of the rejection together with reconsideration of the claims.

Thus, in view of the amendments and arguments herein, Applicants submit that claims 1 and 8 are in condition for allowance. With regard to dependent claims 2-7, Applicant asserts that the claims are allowable on their own merit, and further at least because claims 2-7 depend from independent claim 1, which Applicants have shown to be allowable.

Thus, it is respectfully submitted that all of the claims in the present application are clearly patentable over the references cited by the Examiner, and an indication to such effect is respectfully requested, in due course.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding objection and rejection of the claims, as well as an indication of the allowability of each of the claims in view of the herein-contained remarks.

Applicant notes the status of the present application as being after final rejection and with respect to such status believes that there is a clear basis for the entry of the present amendment consistent with 37 C.F.R. § 1.116. Applicant notes amendments after final are not entered as a matter of right, however, Applicant submits that the amendment made to the pending claims do not raise any new issues requiring further search or consideration. It is also submitted that the present amendment does not raise the question

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of new matter. Moreover, the present amendment and the remarks submitted herewith clearly place the present application in condition for allowance.

SUMMARY AND CONCLUSION

Applicants believe that the present application is in condition for allowance, and respectfully request an indication to that effect. Applicants have amended the claims to enhance clarity and argued their allowability. Accordingly, reconsideration of the outstanding Official Action and allowance of the present application and all the recited claims therein are respectfully requested and now believed to be appropriate.

Any amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Accordingly, Applicant respectfully requests entry of the present amendment in accordance with the provisions of 37 C.F.R. § 1.116, reconsideration and withdrawal of the outstanding objections and rejections, and indication of the allowability of all of the claims pending herein.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,  
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